HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 718 of 2002 (M/S)
State of Uttaranchal
Vs.
Addl Chief Revenue Commissioner
Circuit court Uttaranchal Nainital
and others.

Approved for reporting.

~~Not approved fro reporting~~

Date of decision 07.02.2006.

Initial of Judge

Reserved

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 718 of 2002 (MS)

State of Uttaranchal ..... Petitioner

Versus

1. Additional Chief Revenue Commissioner
   Circuit Court, Uttaranchal Nainital
2. Sukhdev Singh s/o Late Kshimir Singh,
   Himmatpur Talla, Tehsil Haldwani,
   District Nainital
3. Mool Chand s/o Shivdayal r/o Himmatpur
   Talla, Teshil Haldwani, District Nainital ..... Respondents

Sri M.C. Tiwari, Standing Counsel for the petitioner
Sri Akhilesh Kalra, Advocate for the respondents.

Dated: February 7, 2006

Hon'ble Rajesh Tandon J.

Heard Sri M.C. Tiwari, Standing Counsel for the petitioner and Sri Akhilesh Kalra, Advocate for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the judgment and order dated 3.6.2002 passed by the Additional Chief Revenue Commissioner in second Appeal No. 159 of 1993-94.

Briefly stated according to the petitioner on Sri Kashmir Singh who happened to be the father of Sri Sukhdev Singh respondent no. 2 filed a suit No. 22/1001 (90-91) under section 229-B of U.P.Z.A. & L.R. Act for declaration of Bhumidhari

rights on the basis of adverse possession over Khasara no.97-M, 98M, 113, 114 and 115 in village Himmatpur Talla Tehsil Haldwani. It was stated that the original tenure holder of the land in question was Mool Chand s/o Shivdayal as per the entry in the revenue records. The plaintiff claimed himself in possession of the land in question since 1953-54. The petitioner alleged that initially his name was recorded in ClassX-A under U.P. Tenancy Act and subsequently his name was recorded in Class IV. The suit was contested by the State on the ground that the land in dispute is recorded in Class IV and is governed by the Public Premises (Eviction of Unauthorised Occupants) Act and the relief sought by the plaintiff cannot be given. The Assistant Collector, Haldwani dismissed the suit vide order dated 28.5.1993. Aggrieved by that order the plaintiff Kashmir Singh filed appeal before the Commissioner, Kumaon Division, Nainital. The Commissioner dismissed the appeal vide judgment and order dated 17.3.1994 against which the plaintiff preferred second appeal No. 169 of 1993-94 before the Board of Revenue U.P. Allahabad. During the pendency of the appeal Kashmir Singh died and his son Sukhdev Singh (respondent no.2) was substituted. After creation of State of Uttaranchal the appeal was transferred to the Additional Chief Revenue Commissioner, Circuit Court, Nainital (Respondent no.1) for hearing. The second appellate court allowed the appeal vide order dated 3.6.2002 setting aside the order dated 17.3.1994 and 28.5.1993 passed by the Commissioner, Kumaon Division and assistant Collector, Haldwani respectively. Feeling aggrieved State of Uttaranchal has filed the present writ petition.

The contention for the petitioner is that the impugned order has been passed in a cursory manner without application of mind. The respondent no.1 has ignored the provisions of U.P.Z.A. & L.R. Act and has reversed the reasoned orders passed by the two courts below. Khasra nos 97 and 98 were never recorded in the name of original tenure holder Mool Chand in the land records. The second appellate authority has over-looked the documentary filed by the petitioner and arbitrarily passed the impugned order. The original Class VIII Maurusi Asamian, Mool Chand abandoned the land and the land vested in the state and was rightly recorded in Class 10a. The father of the respondent no.1 without the consent and permission of the State Government was not in lawful possession on the Government land.

A perusal of the documents on record and order passed by the second appellate shows that the land in question was originally belonged to Mool Chndra who was recorded as Maurusidar class VIII in the revenue records. The father of the respondent no.2 namely Sri Kashmir Singh was in possession over the land in dispute since 1952 and after his death respondent no. 2 is in possession over the land in question. Before application of U.P.Z.A. & L.R.Act, the land in question was governed under U.P. Tenancy Act, and the father of the respondent no. 2 Kashmir Singh was the tenant over the land in question.

Section 131 of U.P.Z.A. & L.R. Act was amended vide notification No. 226(1) (IA.2-1(2)-69 dated June 30, 1969. The extract of the Notification is quoted below:

"In exercise of the powers under clause (b) of sub section (1) of section 2 of the Uttar Pradesh Zimindari Abolition and

Land Reforms Act 1950 (U.P. Act No. 1 of 1951), (hereinafter referred to as "the said Act") the Governor is pleased to direct that the said Act shall with effect from the first day of Jyly, 1969, apply to all estates of parts thereof, owned by the State Government, situate in the villages within the Tahsils/Peshkaris of Haldwani Kaladhungi, Ram Nagar, Kichcha, Bazpur, Sitarganj and Khatima in the Nainital District (other than village or portious thereof specified in Schedule 1, appended thereto) and also situate in the Kham village of Garhwal Bhabar Government Estate in the Garhwal District in which no person hs rights as an intermediary as defined in clause (12) of section 3 of the said Act, subject to the modifications and amendments, specified in Schedule II appended hereto.

**** ********** *********

8 13 For Section 131, the following shall be substituted:

"[3] Every person belonging to any of the following classes shall be called a Sirdar and shall have all the rights and the subject to tall the liabilities conferred or imposed upon sirdars by or under this Act; namely-

(a) every person who, on the date immediately preceding the appointed day held land as-

(i) an occupancy tenant

(ii) a hereditary tenant,

(iii) a grantee at favourable rate of rent,

(iv) a lessee holding a lease under the provisions of Government Grants Act 1985 and having rights of a hereditary tenant under the terms of the lease, but not possessing the right to transfer the holding by sale.

(b) Every person who is admitted as sirdar of vacant land under the provisions of this Act.

(c) A tenant in any of the 42 Buxari villages specified in the annexure, appended hereto who was recorded in Class X (1) in the Khatwal of the previous agricultural year and

(d) Every person who in any other manner acquires the rights of a sirdar under or in accordance with the provisions of this Act."

Thus by virtue of the aforesaid amendment the lease holders had become Sirdar on 1.7.1969 and on the appointed day the plaintiff was in possession of the land in dispute and acquired rights as sirdar and by application of the provisions of U.P.Z.A. & L.R. Act, he became Bhumidhar of the land. Thus on the date of alleged notification the plaintiff was Bhumidhar of the land in suit.

The second appellate Court has also allowed the appeal of the plaintiff on the ground that Sri Kundan Singh who was the real brother of the plaintiff filed suit under section 229-B of U.P.Z.A. & L.R. Act for another part of the same land which was decreed by the Assistant Collector vide order dated 29.12.1989, against which the State had filed appeal which was allowed by the Commissioner but in the second appeal No. 116 of 1990-91, Board of Revenue vide order dated 19.11.1997 declared the brother of the plaintiff Sri Kundan Singh as Bhumidhar over the land in dispute. That order of Board of Revenue, U.P. was become final and binding as no writ was preferred against that order. The evidence adduced in the present case is similar to that of the case of Kundan Singh and the suit of Kundan Singh was also with regard to the part of land, which was originally

belonged to Mool Chand. Thus the second appellate Court on the ground of parity also allowed the appeal of the respondent no.2 and decreed the suit. I find no infirmity or illegality in the order passed by the second appellate Court. The writ petition has no force and is liable to be dismissed.

Accordingly the writ petition is dismissed. No order as to costs.

February 7, 2006

*Dhyani **Rajesh Tandon J.**